

REPORT - PLANNING COMMISSION MEETING
October 28, 2004

Project Name and Number: **Echo Karaoke PD Minor Amendment (PLN2004-00246)**

Applicant: Michael Sun

Proposal: To consider a Planned District Minor Amendment to allow the onsite sale and consumption of beer and wine in conjunction with, and extend the hours of operation of, an existing karaoke facility. The proposed Amendment would also eliminate the online arcade gaming (similar to cyber café) use previously approved for the site.

Recommended Action: Approve, based on findings and subject to conditions.

Location: 34771 Ardenwood Boulevard

Assessor Parcel Number(s): 537-0521-033-00

Area: 4,000 square foot tenant space within an existing 20,752 square foot building on a 1.6 acre parcel.

Owner: Ardenwood Retail Associates

Agent of Applicant: Same as Applicant

Consultant(s): Hau-Ching Liao, LHC Design

Environmental Review: This project is exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act Section 15301, Class 1, Existing Facilities.

Existing General Plan: Thoroughfare Commercial

Existing Zoning: P-89-2, Planned District

Existing Land Use: Shopping center with eating establishments, drive-through fast food, a gasoline service station, an amusement center (go karts and miniature golf), car wash facility, and a child daycare facility.

Public Hearing Notice: A total of 24 notices were mailed to owners and occupants of property within 300 feet of the site on Ardenwood Boulevard. The notices to owners and occupants were mailed on October 14, 2004. A Public Hearing Notice was delivered to The Argus on October 10, 2004 to be published by October 14, 2004.

Executive Summary: The Planning Commission is being asked to consider a Planned District Minor Amendment ("Amendment") to permit operational modifications to a previously approved use permit, approved under Planned District Minor Amendment PLN2003-00020. The Amendment is proposed to permit the onsite sale and consumption of beer in conjunction with, and to extend the hours of operation of, an existing karaoke facility. In addition, the Amendment also is proposed to eliminate the online arcade gaming previously approved for the site and impose an age restriction to only permit customers over 21 years of age. Staff recommends the proposed project based on the proposal and recommended conditions.

Background and Previous Actions: In August of 1989, the City Council approved P-89-2 for the development of a retail/commercial center of approximately 71,601 square feet of floor area. In March of 1991, the City Council approved a major amendment to the Planned District (P-89-2B) for a preliminary and precise site plan to permit a fast food, drive-through restaurant (Jack-In-The-Box). In September of 1991, the City Council approved a major amendment to the

Planned District to allow the development of a 18-hole miniature golf course, a go-cart track, batting cage facilities, and a game arcade (now closed). Several subsequent amendments followed, whereby the Planning Commission approved amendments to the approved uses, site plan and architecture of the Planned District. Of these, the Planning Commission approved four amendments (P-89-2D, E, G, and PLN2002-00084) for the onsite sale and service of beer and wine in conjunction with four eating establishments.

On October 10, 2002, the Planning Commission approved Planned District Minor Amendment PLN2003-00020, which conditionally permitted the operation of a karaoke and online gaming facility at the site. The facility, known as "Echo" (formerly "Studio 84"), is located within a 4,000 square foot tenant space (includes a 1,000 SF mezzanine). The facility contains eleven karaoke stations in different sizes, one 206 square foot online electronic gaming station now proposed to be eliminated, a café room (labeled as break room on plans), front lobby, restrooms and a janitorial room. The size of the eleven karaoke stations range from 63 square feet to 164 square feet. The tenant space is equipped with one main entrance and two exits. The main entrance/exit is at the front of building at the lobby, and a second exit/supply service door is at the rear of the building. At the rear portion of the tenant space, there are stairs leading to the second level mezzanine (1,000 square feet) that is used for storage purposes only.

Project Description: The project is a Planned District Minor Amendment to permit onsite sale and consumption of beer in conjunction with extended hours of operation within an existing karaoke facility. The beer and wine service, a Type 41 (or Type 40 for beer only) license from the State Department of Alcohol Beverages Control (ABC), is proposed to be available for the patrons within the facility during the hours permitted under the ABC license. The proposal also includes an extension of the hours of operation from 1 a.m. to 3 a.m., Monday through Sunday. In addition, the online gaming facility would be eliminated and later converted to additional area for the café. Finally, an age restriction is proposed, which only would allow patrons of 21 years of age or older within the facility.

PROJECT ANALYSIS: Pursuant to Condition #5 of P-89-2 (Conditions of Approval), the uses permitted in this commercial center are those uses permitted under the Thoroughfare Commercial (C-T) District. Under that condition, the project requires Planning Commission review and approval, as the use would generally require a Conditional Use Permit in the C-T District. However, because the proposed use is located in a commercial planned district, a Planned District Minor Amendment is required in lieu of the Conditional Use Permit. The review of a conditionally permitted use provides an opportunity to conduct a detailed review of the proposal to assess compatibility issues, and to develop "Conditions of Approval" that will eliminate or mitigate any potential impacts to adjacent users and the surrounding area.

Staff finds that the project as proposed would not adversely impact adjacent users and the surrounding area, nor would it create an impact on City services. The Police Department reviewed the application and had no objection to the operational modifications. According to City records, the Police Department indicated that there were no incidents reported related to the site or operation, except for a few responses to false alarms. The Police Department provided staff with recommendations (conditions of approval) to address concerns of noise, safety, security and adverse impact on adjacent users. These conditions are typical of those applied to a late night entertainment uses.

Staff has reviewed the existing safety measures currently implemented within the facility and the previously approved operational conditions and concludes that they are sufficient. Conditions are proposed to revise the hours of operation as requested; eliminate the 206 square foot online gaming area and use; set an age restriction to only permit patrons of 21 years of age or older; and, to permit the onsite sale and consumption of beer and (Type 40 Beer Only or Type 41 Beer and Wine, ABC license).

The proposed use is compatible with other uses in the Planned District and the surrounding area. The shopping center is located at least 650 feet from the nearest residential development, abuts industrially zoned parcels to the east, open space to the northwest and Caltrans Park & Ride to the west. Appropriately, operational conditions are proposed to mitigate potential adverse impacts. Further, the use is conformance with the general plan, zoning, and parking requirements, as indicated below.

- (a) **General Plan Conformance:** The existing General Plan land use designation for the project site is C-T, Thoroughfare Commercial. The proposed project is consistent with the existing General Plan land use designation for the site because the use is conditionally permitted in this district and, with the incorporation of

the proposed operational conditions, is appropriate for its location and surroundings. The General Plan Goals, Objectives and Policies under Chapter 3, *Land Use*, are applicable to the proposed project. Policy LU 2.28 states, in part, that "...the thoroughfare designation shall apply to uses which primarily serve the traveling public...". The proposed use is appropriate for the center where the entertainment facility may provide service to the public who will travel to the site.

- (b) **Zoning Regulations:** The project site is zoned P-89-2 where the permitted uses are as those permitted under the Thoroughfare Commercial (C-T) District. In the C-T district, an amusement and/or recreation service requires a Conditional Use Permit approval by the Planning Commission to ensure that the use is compatible and suitable with its location and surroundings.
- (c) **Parking and Access Analysis:** The amount of parking provided onsite was based on the requirement for a shopping center as set forth in the Ordinance (1 space per 250 square feet of gross floor area). The site provides 82 joint access parking spaces. The Zoning Ordinance does not specifically set minimum parking standards for karaoke facilities. However, the facility was previously required to establish a minimum, parking ratio of 1 space per 300 square feet of gross floor area (exclusive of the upper mezzanine storage area) for the karaoke use, which continues to be appropriate. Based on this requirement, the use requires 10 parking spaces. The site has sufficient parking for this use.

Waste Management: Adequate waste and recycling facilities are currently provided for the existing karaoke facility. A condition is proposed to ensure that this requirement is maintained.

ENVIRONMENTAL ANALYSIS: This project has been determined to be exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act Section 15301, Class 1, Existing Facilities.

Response from Agencies and Organizations: To date, no response or concerns have been received.

ENCLOSURES:

Exhibit "A" (Vicinity Map, Site Plan and Floor Plan)
Informational "1" (Applicant's Justification Statement)

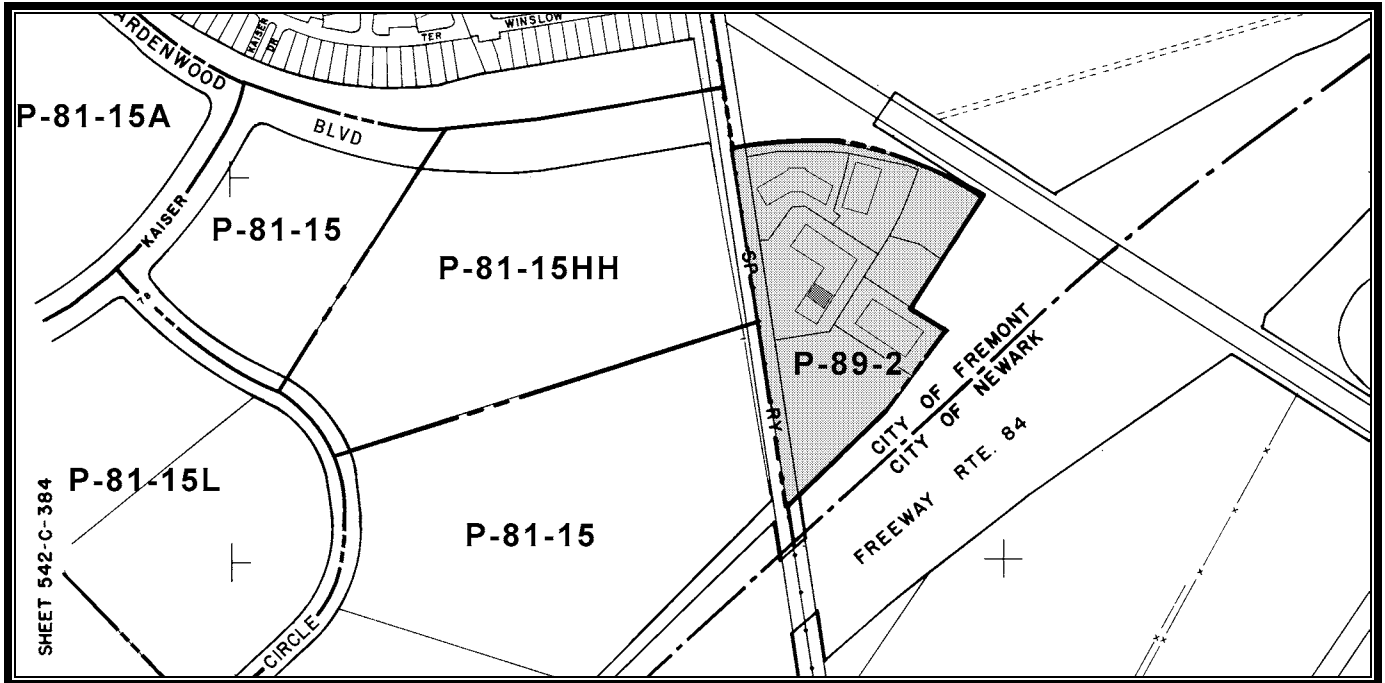
EXHIBITS:

Exhibit "A" (Vicinity Map, Site Plan and Floor Plan)
Exhibit "B" (Findings and Conditions of Approval)

Recommended Actions:

1. Hold public hearing.
2. Find that this project is exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act Section 15301, Class 1, Existing Facilities.
3. Find PLN2004-00246 is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Land Use Chapter as enumerated within the staff report.
4. Approve PLN2004-00246, as shown on Exhibit "A", subject Findings and Conditions of Approval in Exhibit "B".

Existing Zoning
Shaded Area represents the Project Site



Existing General Plan

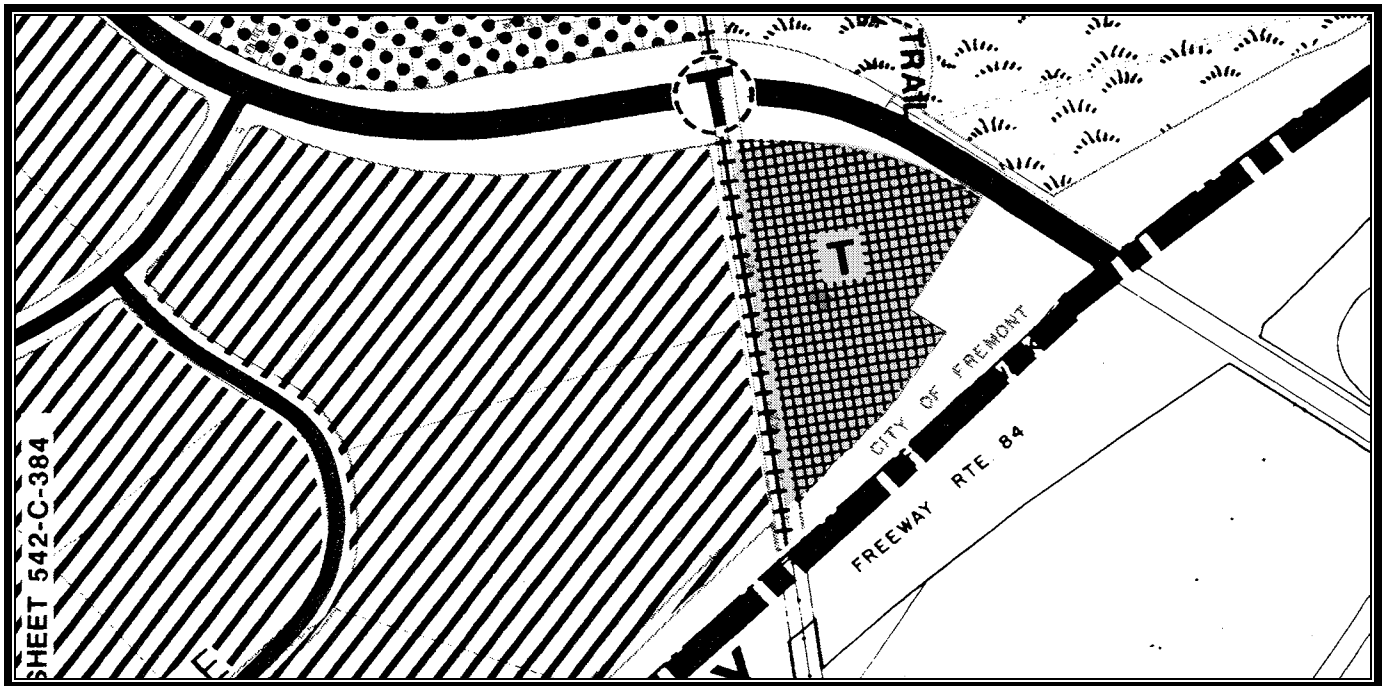


Exhibit "B"
Findings and Amended Conditions of Approval
Echo Karaoke Facility at 34771 Ardenwood Boulevard
PLN2004-00246 (Planned District Minor Amendment)

FINDINGS FOR APPROVAL

The findings below are made on the basis of information contained in the staff report and testimony at the public hearing to the Planning Commission dated October 28, 2004, incorporated herein:

- a) The site is suitable and adequate for the proposed use because the request is an application for an amusement center, which requires a minor amendment [Conditional Use Permit] to the commercial planned district. The planned district allows for a variety of uses both permitted and conditionally permitted, and the proposed use, subject to conditions, will be consistent with the purposes of the planned district zoning. Through the proposed conditions, the use of the tenant space will be compatible with the surrounding commercial properties and the proposed use will be conducted in accordance with the City ordinances, ensuring compliance with the development standards of the planned district.
- b) The proposed use would not have a substantial adverse effect on traffic circulation, the planned capacity of the street system or other public facilities or services because points of ingress-egress are properly located, sufficient parking is provided, and adequate fire fighting equipment access and facilities are available. In fact, the use is located off an arterial [Ardenwood Boulevard] and has convenient access from State Route 84.
- c) The proposed use would not have a substantial adverse economic effect on nearby uses because there are no karaoke facilities in the immediate vicinity, or in the City, providing such services to the traveling public.
- d) The proposed use would not have a substantial adverse impact on the general welfare of persons residing in the community because the proposed use is properly located within an established shopping center on a fully developed site where its use is suitable with and compatible with its location and surroundings. Appropriately, the use is proposed to be restricted and, through conditions, impacts on the adjacent commercial neighbors would be minimized. The proposed conditions, as a result of this planned district minor amendment [Conditional Use Permit], would provide restricted hours of operation, an age restriction, compliance with ABC, lighting, surveillance, and security.
- e) The proposed use is compatible with existing and proposed development within the planned district and its surroundings because the 4,000 square foot tenant space would not require any further, substantial interior modifications and there would be no need for exterior modifications to the existing shopping center.
- f) The proposed use is consistent with the General Plan. The General Plan relies on the planned district to direct development for allowable uses in this area. The general plan and planned district encourage those commercial uses oriented towards serving the traveling public. The project as proposed meets the goals of the General Plan for this area in that it would provide amusement services to the traveling public given its location on an arterial and close proximity from Route 84.
- g) No public improvement or facilities are required as part of this approval, as well as the required assessment of development impact fees.
- h) The proposed use will comply with the provisions and conditions of the planned district and all applicable laws. Noncompliance with any of the Conditions of Approval, Federal, State or local laws may result in revocation of the use.

GENERAL CONDITIONS OF APPROVAL (Must be satisfied on an ongoing basis)

The following conditions herein supercede all conditions approved by the Planning Commission on October 10, 2002 in Exhibit "B" of PLN2003-00020.

1. Approval of PLN2004-00246 shall conform to Exhibit "A" (Site Plan and Floor Plan) and applies only to the 4,000 square foot tenant space denoted on the site and floor plan. The uses approved include 11 karaoke stations and the onsite sale and consumption of beer and wine (Type 40 or Type 41 ABC license). The 206 square foot area previously dedicated to online gaming services shall be eliminated and converted to additional area for the café. The floor plan proposed for building permits shall substantially conform to the plans previously approved, stamped and dated October 10, 2002, except as modified herein.
2. Any modification to the Planned District Minor Amendment shall be subject to review and approval of the Assistant City Manager if such modifications are in keeping with the intent of the original approval, unless the Assistant City Manager finds that such modification warrants review and approval by the Planning Commission.
3. The use at the facility shall not engage and/or render any services as defined in Chapter 10 of the Fremont Municipal Code relating to "Adult Oriented Businesses", unless a valid "Adult-Oriented Business Permit" is obtained and an approval of a Major Amendment to this Planned District is approved by City Council.
4. Any tenant improvements proposed and permitted under these conditions must comply with all fire and building Federal, State and local code requirements.
5. The modification to the 206 square foot online gaming area into additional seating area for the café shall be provided in the revised plans submitted to the City's Plans and Permit Section. This component of the facility will be subject to the review and approval of the Plans and Permit Section of the City and all other applicable State and County health regulatory agencies.
6. Beer and wine may be served subject to State of California Type 40 (Beer Only) or Type 41 (Beer and Wine) licensing (Alcoholic Beverage Control) requirements. **No alcoholic beverages may be served past 1:30 a.m.** No alcoholic beverages may be served or consumed outside of the karaoke facility. The operation of the facility must be in full compliance with ABC restrictions and regulations.
7. The applicant shall maintain signs stating " No loitering or consumption of alcoholic beverages" on the exterior of the building and within all parking areas.
8. The floor plan must always meet access/egress requirements of the Building Division and Fire Department. In addition, the applicant shall submit and receive approval of a Fire Exit Plan from the City's Fire Department. The plan shall address all exiting requirements to meet the requirements of all federal, state and local building codes. This includes, but is not limited to, providing an exiting plan showing equipment location, aisle locations and dimension widths, and having approved exit doors and panic hardware where necessary.
9. The hours of operations for the facility shall be limited to 3 p.m. to 3 a.m., Monday through Sunday. Minor modification of these hours of operation may be permitted if requested in writing, subject to the review and approval of the Assistant City Manager. All patrons must be off the premises within 30 minutes after the facility's closure.
10. All patrons within and employees of the facility must be the age of 21 years or older.
11. Lighting within the facility, especially within the hallways and all stations, shall be established and kept at a level not less than forty (40) watts per hundred (100) square feet of floor area to provide visibility and to ensure the safety of patrons, employees, security and emergency personnel. The established lighting within the facility will be subject to the review, modification and approval of the City's Police Department.

12. The front exterior windows shall be maintained free and clear. No tinting or blinding of the exterior windows shall be allowed. Posters and signs shall be displayed in a manner that does not obstruct the view of the interior area from outside of the facility. The interior wall adjacent to the exterior windows shall be redesigned or removed to allow unobstructed view of the interior area of the establishment.
13. The seating area within the lobby shall be maximized, if feasible, for those patrons waiting for service. No exterior loitering shall be allowed. All patrons waiting for service must wait in the designated lobby. No waiting list may be maintained beyond the seating capacity provided in the lobby. If necessary, the applicant may revise the floor plan to increase the lobby area for providing additional waiting seats, subject to the review and approval of the Assistant City Manager.
14. The walls separating the establishment from adjacent commercial tenants shall employ effective noise attenuating devices to achieve a minimum standard transmission coefficient (STC) sound rating of 45-50. Such wall shall be soundproofed where no amplified music shall be audible on the exterior of the premises or adjoining tenant spaces. Should the improvements installed not provide acceptable noise levels, or should the noise emanating from the establishment cause noticeable discomfort to adjacent tenants, the establishment may be required to install additional noise attenuating devices. In doing so, the applicant may be required to request the services of a professional consultant specializing in noise attenuating devices to mitigate such impacts.
15. The parking lot shall be well lit, at least one foot candle, during hours of darkness up until one hour past closing time.
16. The existing security guard provided by the Ardenwood Retail Associates for the entire premises may be used to provide security for the proposed facility during those hours provided. The applicant/operator will be required, at their cost, to either (a) extend the contract with the existing security firm as retained by the Ardenwood Retail Associates or (b) retain a different security firm qualified to cover any hours of operation left uncovered. Ultimately, the responsibility is upon the applicant/operator of the facility to provide adequate security at the facility by retaining at least one security guard during all hours of operation. Such security guard shall be charged with preventing violations of law and enforcing compliance by patrons of the stated prohibitions for the facility and ensuring that all patrons have left the premises within 30 minutes after the facility's closure. The Security guard shall be uniformed in a manner distinct in color, style, design and appearance from a city police department or city uniform so as to be readily identifiable as a private security guard by the public and shall be duly licensed as a security guard as required by applicable provisions of state law. No security guard is permitted to act as a door person, admittance person, or sole occupant of the manager's station while acting as a security guard. Additionally, the security guard may not engage in the online gaming, karaoke services provided at the facility or any other services within the shopping premises while on duty. The applicant shall provide proof to the Assistant City Manager anytime upon request that at least one security guard from a qualified private security firm(s) is retained and is adequate in providing security for the facility during all hours of operation.
17. Should additional security measures be needed in order to address any public safety concerns arising from the business, the applicant shall provide those additional security measures as requested by the City's Police Department and/or Assistant City Manager.
18. The use shall provide full time adult attendants or supervisors, twenty-one (21) years of age or older. No employees shall be under the age of 21. An adult manager, age 25 years or older, shall be on site during all business hours and shall be responsible for maintaining order inside the establishment.
19. The applicant shall work, as necessary, with the Police Department to review and upgrade (if necessary) surveillance equipment installed on site. Surveillance shall be provided for the front lobby and all hallway areas. Surveillance monitors will be located at the front lobby and will be monitored by the adult manager at the site. The Police Department shall approve the proposed surveillance equipment prior to the issuance of a business license and approval of building permits. The recorded surveillance tapes shall be kept for a period of no less than one month or 30 working days.

20. All karaoke stations shall be limited to the approved appurtenances; no Internet service or online electronic gaming shall be allowed within these stations.
21. All patrons entering the facility must provide picture identification before engaging in the karaoke service rendered at the facility to ensure that those patrons are adhering to the facility's regulations and conditions. A log must be kept at the facility. Such log shall be maintained for at least 120 days and surrendered to any city official upon request. The log shall include the patron's name, a state license/identification number, date and time service rendered, and specific station within the facility retained for the service.
22. The second floor/mezzanine floor shall be used for storage purposes only; no services or office use is allowed on this level.
23. No expansion to the proposed use will be permitted, unless the City's Planning Commission approves an amendment for the expansion.
24. Money exchange shall only occur within the lobby area. Not barring any federal, state or building code requirements, if possible, the counter where money exchange occurs in the lobby shall be on a raised platform,
25. Restrooms shall remain operational and available to patrons during all hours of operation.
26. The applicant or successor in interest shall conform to the conditions of approval herein and all other applicable ordinances of the Fremont Municipal Code.
27. All conditions applicable to patrons, particularly the stated prohibitions included in these "Conditions of Approval", of the facility incorporated herein shall be conspicuously posted in the front lobby area in a sign at the entrance with lettering of at least two (2) inches in size.
28. This report and its conditions shall be kept on the premises and made available to any officer/employee of the City upon request.
29. Should the City receive any complaints arising from the facility's use and/or an indication that the facility's use has resulted in an increased need for service calls from emergency personnel (i.e., the Police Department), the Assistant City Manager is authorized to refer this Planned District Minor Amendment to the Planning Commission. The Planning Commission may require modifications to the facility's "Conditions of Approval", or revoke the permit entirely, if it has been found that the use has caused a substantial adverse impact on the community.